

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE FORD MOTOR CO. E-350
VAN PRODUCTS LIABILITY
LITIGATION (NO. II)

Hon. Garrett E. Brown, Jr.
Civil Action No. 03-4558 (GEB)
MDL No. 1687

MEMORANDUM OPINION

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BROWN, Chief Judge:

This matter comes before the Court on the unopposed motions (Doc. Nos. 192, 200) for summary judgment filed by Defendant Ford Motor Company (“Ford”) as to Plaintiffs New

Bethlehem Baptist Church (“New Bethlehem”) and Eleventh Street Baptist Church (“Eleventh Street”) in this multidistrict litigation. Ford has filed a total of 21 summary judgment motions in this putative class action, and requests that summary judgment be granted in its favor with respect to all 22 individual named Plaintiffs, involving the laws of 13 states. Ford has identified each of its motions by number, ranging from 1 to 21. This Opinion will only address Ford’s motions Nos. 1 and 7, which seek summary judgment with regard to the claims asserted by New Bethlehem (Alabama) and Eleventh Street (Arkansas). The Court will resolve Ford’s remaining summary judgment motions in due course.

On June 16, 2005, the Judicial Panel on Multidistrict Litigation transferred five actions¹ to this Court for consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *In re Ford Motor Co. E-350 Van Prods. Liab. Litig. (No. II)*, 374 F. Supp. 2d 1353 (J.P.M.L. 2005). Following the transfer to this Court, Plaintiffs filed a Consolidated and Amended Class Action Complaint (“Complaint”). In the Complaint, Plaintiffs allege that their Ford E-350 “15-passenger” vans were defectively designed due to a high center of gravity that leads to an unusually high rollover rate, and consequently, an increased risk of death or injury. No Plaintiffs or members of the proposed class have actually suffered a rollover. Plaintiffs claim economic harm because the alleged defect makes the E-350 vans purportedly unsuitable and unfit for transporting 15 passengers. The Complaint asserts claims on behalf of Plaintiffs and a putative nationwide class that includes: “all persons and entities who purchased or otherwise lawfully

¹*New Bethlehem Baptist Church v. Ford Motor Co.*, No. 2:05-519 (N.D. Ala.); *Eleventh Street Baptist Church v. Ford Motor Co.*, No. 4:05-4020 (W.D. Ark.); *Greater All Nation Pentecost Church of Jesus Christ v. Ford Motor Co.*, No. 2:05-1765 (C.D. Cal.); *Pentecostal Temple Church of God in Christ v. Ford Motor Co.*, No. 1:05-1340 (N.D. Ill.); *Social Clubhouse, Inc. v. Ford Motor Co.*, No. 2:03-4558 (D.N.J.).

acquired E350 ‘15-passenger’ vans (a/k/a E350 Super Club Wagons, Econoline ‘15-passenger’ vans, or E350 Super Duty Extended Length passenger vans) manufactured by Defendant Ford Motor Company . . . model years 1991-2005, and who reside in the fifty states and/or the District of Columbia.” (Compl. ¶ 1.) This class includes persons or entities who purchased new or used model years 1991-2005 Ford E-350 vehicles between January 1, 1991, and the date of the filing of the Complaint, inclusive.

Each named Plaintiff asserts four causes of action: (1) breach of express warranty; (2) breach of implied warranty; (3) unjust enrichment; and (4) violation of the state consumer fraud statutes applicable to each Plaintiff. The Complaint initially asserted claims on behalf of various named Plaintiffs from five states: Alabama, Arkansas, California, Illinois, and New Jersey. Ford moved to dismiss the entire Complaint. In an Opinion and Order dated September 2, 2008, Senior United States District Judge Harold A. Ackerman granted in part and denied in part Ford’s motion.² *In re Ford Motor Co. E-350 Van Prods. Liab. Litig. (No. II)*, No. 03-4558, MDL No. 1687, 2008 WL 4126264, at *29 (D.N.J. Sept. 2, 2008).³ With regard to the Alabama and Arkansas Plaintiffs at issue in this Memorandum Opinion, Judge Ackerman dismissed these Plaintiffs’ express warranty, implied warranty, and respective state consumer fraud statutory claims, but denied Ford’s motion with regard to these Plaintiffs’ unjust enrichment claims. *Id.* at *29-30.

In Ford’s motions Nos. 1 and 7, Ford seeks summary judgment on the sole remaining

²In August 2009, this matter was reassigned to the undersigned.

³Judge Ackerman issued an Amended Opinion and Order on September 3, 2008 (Doc. No. 142) that made no substantive revisions to the initial Opinion and Order issued one day earlier.

claim of unjust enrichment asserted by each of these Plaintiffs. Plaintiffs do not oppose these motions because “neither Plaintiff New Bethlehem nor Plaintiff Eleventh Street purchased class vehicles.” (Pls.’ Omnibus Br. at 2 n.3.) Indeed, the record reflects that New Bethlehem purchased a used 1988 model year E-350 van, and Eleventh Street purchased a 1990 model year E-350 van. Plaintiffs’ Complaint only seeks relief for those persons and entities who purchased or otherwise lawfully acquired “model years 1991-2005” Ford E-350 vehicles. (Compl. ¶ 1.) Because, as Plaintiffs concede, New Bethlehem and Eleventh Street did not purchase vans falling within the scope of the Complaint, this Court will grant Ford’s motions for summary judgment as to these two Plaintiffs.

Conclusion

For the foregoing reasons, this Court will grant Ford’s motions for summary judgment as to New Bethlehem (Doc. No. 192) and Eleventh Street (Doc. No. 200). An appropriate form of order accompanies this Memorandum Opinion.

Dated: November 18, 2009

S/Garrett E. Brown, Jr.
Garrett E. Brown, Jr., Chief Judge
United States District Court